

STATE OF ILLINOIS  
ILLINOIS COMMERCE COMMISSION



8-21-03

STATE OF ILLINOIS  
ILLINOIS COMMERCE COMMISSION

Village of Wheeling

Vs.

Wisconsin Central Limited

Petition for an Order of the Illinois Commerce Commission directing the construction of a pedestrian grade crossing for the Hintz Road sidewalk with the tracks of the Wisconsin Central Limited (hereinafter the "Railroad") in the Village of Wheeling.

T03-0060

Petition for an Order of the Illinois Commerce Commission directing the construction of a pedestrian grade crossing for the Dundee Road sidewalk with the tracks of the Wisconsin Central Limited (hereinafter the "Railroad") in the Village of Wheeling.

Consolidated with/

T03-0061

TO ALL PARTIES OF RECORD:

ADMINISTRATIVE LAW JUDGE'S PROPOSED ORDER

Attached is a copy of the Administrative Law Judge's Proposed Order in the above referenced matter.

The Administrative Law Judge's Proposed Order is being sent to you pursuant to the Commission's Rules of Practice (83 Ill. Adm. Code 200). Your case is a "contested case" or "licensing case" as defined in Section 200.40 of the Rules and, therefore, the Hearing examiner is required under Section 200.820 to issue a Proposed Order to all parties.

Under Section 200.830 of the Rules, exceptions to the Proposed Order and replies thereto may be filed by the parties within the time periods established by the rules of such other times as fixed by the hearing examiner. The times for filing exceptions and replies are fixed at ten days and five days, respectively.

ENTERED:

*June B. Tate*

June B. Tate  
Administrative Law Judge  
Review and Examination Program

JBT:rsc

Mr. Vercruysse

**DOCKETED**

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Petition for an Order of the Illinois Commerce Commission directing the construction of a pedestrian grade crossing for the Dundee Road sidewalk with the tracks of the Wisconsin Central Limited (hereinafter the "Railroad") in the Village of Wheeling.

T03-0061

TO ALL PARTIES OF RECORD:

**PROPOSED ORDER**

By the Commission:

On June 12, 2003 the Village of Wheeling, Illinois ("Petitioner") filed the above-captioned petitions with the Illinois Commerce Commission ("Commission") naming as Respondent the Wisconsin Central Ltd. ("the Railroad").

Pursuant to notice, the matter came on for hearing before a duly authorized Administrative Law Judge of the Commission at the Commission's Chicago office on August 12, 2003. Petitioner was represented by counsel. By letter dated August 5, 2003, Respondent informed the Commission that it had no objection to the proposed project and would not attend the hearing. An appearance was entered by Brian Vercruysse, Railroad Safety Specialist of the Commission's Transportation Bureau. An appearance was also entered by the Special Assistant Attorney General ("SAAG"), Diana G. Collins, on behalf of Commission staff. Testimony and evidence were provided by Petitioner's professional engineer, Richard Glenz. At the conclusion of the hearing, the record was marked "Heard and Taken."

Hintz Road is an arterial street under the jurisdiction of the Cook County Highway Department and extends generally east and west through the Village of Wheeling. Petitioner proposes the construction of a five foot (5') wide sidewalk on the north side of Hintz Road, as depicted in Exhibit A attached to the petition and made a part hereof, for the purpose of providing continuity with other pedestrian sidewalks and to provide improved safety for pedestrians and cyclists. Foot traffic is engendered by a nearby bus stop, businesses, and an industrial area.

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Dundee Road is an arterial street under the jurisdiction of the Illinois Department of Transportation, running in a generally east-west direction through the Village of Wheeling. Petitioner proposes the construction of an eight foot (8') wide sidewalk on the north side of Dundee as depicted on Exhibit A attached to and made a part of the petition. Foot traffic is engendered by a Burger King, Metra station, offices, the Village Hall, an aquatic center, offices, and businesses.

The Railroad operates main tracks at the subject crossings running in a generally north-south direction. There are two tracks crossing Hintz Road and the crossing is equipped with gates, bells, and automatic flashing light signals. The Dundee Road crossing is similarly equipped. There is a single track at the Dundee Road crossing but the Railroad will be constructing an additional track there later this year. A third track, crossing Hintz Road, is also scheduled for construction by the Railroad.

Preliminary planning is underway and construction costs have not been determined. All costs will be the responsibility of Petitioner. The Railroad will install and thereafter maintain the pedestrian grade crossing.

The Commission, having considered the evidence of record, is of the opinion and finds that:

- (1) the Village of Wheeling, Illinois, is a political subdivision organized and existing under and by virtue of the laws of the State of Illinois;
- (2) the Wisconsin Central Ltd. is engaged in the transportation of persons and/or property by rail in the State of Illinois and as such, is a rail carrier as defined by the Illinois Commercial Transportation Law, as amended;
- (3) the Commission has jurisdiction of the subject matter and parties herein;
- (4) the recitals of fact set forth in the prefatory portion of this order are supported by evidence of record and are hereby adopted as findings of fact;
- (5) it is fair and reasonable that the entire cost of the installation of the pedestrian grade crossings be borne by the Village of Wheeling, Illinois;
- (6) it is fair and reasonable that the cost of future maintenance of the pedestrian grade crossings be borne by the Wisconsin Central Ltd.;
- (7) the project should be completed within one year of the date of this Order.
- (8) Chapter 625 ILCS 5/18c-1701 and 5/18c-1704 of the Law require each "person" as defined by 5/18c-1104 to comply with every regulation or order of the Commission; these sections further provide that any person who fails

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to comply with a Commission regulation or order shall forfeit to the State not more than \$1,000 for each such failure, with each day's continuance of the violation being considered a separate offense; while the Commission expects all parties to comply with this Order in all matters addressed herein and in a timely manner, the Commission advises that any failure to comply may result in the assessment of such sanctions.

IT IS THEREFORE ORDERED by the Illinois Commerce Commission that the Village of Wheeling, Illinois be, and the same is hereby, required and directed to proceed with the construction of pedestrian grade crossings at the intersections of the tracks of the Wisconsin Central Ltd. with 1) Hintz Road and 2) Dundee Road.

IT IS FURTHER ORDERED that the cost of construction of the pedestrian grade crossings is the sole responsibility of the Village of Wheeling.

IT IS FURTHER ORDERED that the cost of the future maintenance of the pedestrian grade crossings is the sole responsibility of the Wisconsin Central Ltd.

IT IS FURTHER ORDERED that all work required of the parties shall be completed within one (1) year of the date of this Order.

IT IS FURTHER ORDERED that the Village of Wheeling shall at six (6) month intervals from the date of this Order until the project has been completed, submit written reports to the Director of Processing, Transportation Bureau of the Commission stating the progress that has been made toward completion of the work herein required. If the project is behind schedule, the report must include a brief explanation of the reason(s) for the delay. Each progress report shall include the Commission Order number, the Order date, the project completion date as noted in the Order, type of improvement, and project manager information (name, title, mailing address, telephone number, and facsimile number) of the employee responsible for the management of the project.

IT IS FURTHER ORDERED that the Village of Wheeling shall within five (5) days of the completion of the work herein, file with the Commission's Director of Processing, Transportation Bureau, a letter advising the Commission of completion of the project.

IT IS FURTHER ORDERED that the Commission shall retain jurisdiction for the purpose of issuing any supplemental order or orders as it may deem necessary.

IT IS FURTHER ORDERED that any person making a Request for Extension of Time up to thirty (30) days to complete a project ordered by the Commission must file a request with the Director of Processing no later than fourteen (14) days in advance of the scheduled deadline. An Administrative Law Judge will consider and decide the request.

IT IS FURTHER ORDERED that any person requesting an extension of time which exceeds thirty (30) days must file a Petition for Supplemental Order with the

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Director of Processing no later than twenty-one (21) days in advance of the scheduled deadline. The Commission will decide Petitions for Supplemental Orders.

IT IS FURTHER ORDERED that Requests for Extension of Time and Petitions for Supplemental Orders must include the reason(s) the additional time is needed to complete the work and the time within which the project will be completed. Prior to submitting a Request for Extension or a Petition for Supplemental Order, the person must notify the Commission's Rail Safety Program Administrator that it is unable to complete the project within the ordered timeframe.

IT IS FURTHER ORDERED that the Administrative Law Judge reserves the right to deny Requests for Extension of Time and Petitions for Supplemental Orders if the reason(s) supporting the request is insufficient or where it appears the person has not made a good faith effort to complete the project within the allotted time. Failure of the Administrative Law Judge to act on a pleading prior to the deadline means the originally ordered completion date remains in effect.

IT IS FURTHER ORDERED that in accordance with Chapter 625 ILCS 5/18c-2201 and 5/18c-2206 of the Illinois Commercial Transportation Law, this is a final Order subject to the Administrative Review Law.

By Order of the Commission this day of 2003.

Chairman